

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 03-0488
Corporate Income Tax
For Tax Years 1999 and 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

I. Tax Imposition—Burden of Proof

Authority: IC 6-8.1-5-1(b); 45 IAC 15-5-3(b)

Taxpayer protests the imposition of income taxes.

II. Tax Administration—Penalty and Interest

Authority: IC 6-8.1-10-1; 45 IAC 15-11-2

Taxpayer protests the penalty and interest.

STATEMENT OF FACTS

Taxpayer (Company Y Manufacturing, referred to as "CYM") is a company with various manufacturing plants in Indiana. A protest was received by the Department stating, that CYM "respectfully protests the proposed assessment of tax, penalty and interest ... in its entirety."

I. Tax Imposition—Burden of Proof

DISCUSSION

Regarding the protest, it should be noted at the outset that it is the *taxpayer* who bears the burden of proof. IC 6-8.1-5-1(b) states in pertinent part:

The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

The Indiana Administrative Code also states "[t]he burden of proving that a proposed assessment is incorrect rests with the taxpayer...." 45 IAC 15-5-3(b).

In a letter dated February 1, 2005, to the Department, the taxpayer states the following:

On October 1, 1996, [Company Y] formed a wholly owned subsidiary corporation named [Company Y Manufacturing, "CYM," i.e. the taxpayer in the present case]. At that time, [Company Y] transferred its Indiana, as well as several other states, manufacturing and operating employees, assets and properties, both real and personal to [CYM]. Following this transfer, [CYM] conducted the manufacturing operations in Indiana in several locations.

Taxpayer's representatives in correspondence with the Department do not develop, nor specify, the exact nature of the protest regarding CYM. Instead, the representatives address issues that relate to *other* protested issues for *other* companies (e.g., Company Y).

In conclusion, the burden of proving the assessment wrong rests with the taxpayer, as provided in IC 6-8.1-5-1(b). Taxpayer has not met this burden.

FINDING

Taxpayer's protest is denied.

II. Tax Administration—Penalty and Interest

DISCUSSION

As noted, the taxpayer in a letter protested the "proposed assessment of tax, penalty and interest..." With regard to interest, the Department refers to IC 6-8.1-10-1, which states in relevant part (*Emphasis added*):

(a) If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on his return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

...

(e) The department *may not* waive the interest imposed under this section.

The negligence penalty is covered by 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence.

Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

The taxpayer bears the burden of proof. The taxpayer has failed to meet that burden.

FINDING

Taxpayer's protest is denied.

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